

REMARKS

In the Official action, the Examiner maintained the rejection of claims 1-36 under 35 USC § 103(a) as being obvious based on the Examiner's citation of the Background of Invention section of the subject application as prior art and US Patent No. 4,537,430. The Examiner made the action FINAL. The Examiner's comments have again been carefully considered and the claims have been amended to better define the present invention and put the application into condition for allowance. An RCE is being concurrently with this response.

Independent claims 1, 5, 9 and 13 have been amended to better define the "liner section" and recite "at least one longitudinal member". The claims as amended claims recite a liner section, which is "formed from a thin steel material". According to an embodiment as described at paragraph [0026], the inner duct liner may have a thickness ranging from 26 gauge to 18 gauge. The longitudinal members are connected to the flange assemblies and provide an external support frame or structure for holding the liner section and the non-combustible layer. The structural integrity is further increased when the longitudinal members are also fastened to the non-combustible layer and the liner section, i.e. to form a type of "sandwich" structure, in which the elements combine to provide structural integrity. It is to be appreciated that this structure allows the liner section to be fabricated from a thin or

lighter steel sheet, for example, 18 to 26 gauge galvanized steel. Not only does this reduce the weight of the duct assembly, but it also reduces the manufacturing costs because the liner section can be formed using conventional sheet metal fabrication techniques as opposed to welding of metal sheets or plates. In addition, the structure as recited by the independent claims allows the duct assembly "to be modified in the field", for example, cut to length as described in paragraph [0042], or for example, with one of the flange assemblies removed, the duct assembly can be routed through an undersized opening and the flange assembly then reconnected, as described in paragraph [0043]. Advantageously, this can prevent timing delays in the installation of the duct assemblies.

It is respectfully submitted that the description in the Background of Invention section relied on by the Examiner as prior art, namely, the description of the Durasystems fire-rated duct systems FRD-1 and FRD-2 in paragraph [0005] does not show, teach or suggest the structure as defined by amended claims 1, 5, 9 and 13. The fire-rated duct, FRD-1, as described relies on a rigid support framework, which is welded from 1/8" thick steel to provide the support for the fire resistant composite panels. Similarly, the fire-rated duct, FRD-2, as described relies on a welded inner liner to provide a support structure for an insulated cavity and an outer fire resistant layer. In view of the need to provide a support structure, it is submitted that the thickness of the steel for the inner liner or framework is not merely a design

choice but a structural requirement or necessity. The welded inner support structure increases the fabrication costs and also makes it costly and time consuming to modify the assembly in the field. FRD-1 and FRD-2 ("Durasystems") are clearly not the same as the structure recited by independent claims 1, 5, 9 and 13 as discussed above. In view of these differences, it is submitted that one skilled in the art would not be led to modify Durasystems. It is further submitted that the combination with Sullivan does not remedy these deficiencies (for at least the reasons discussed in the Applicant's previous response dated December 7, 2005), and therefore if one skilled in the art were to combine Durasystems with Sullivan the resulting apparatus would not be the same as that defined by amended claims 1, 5, 9 and 13. In view of the foregoing, it is submitted that the present invention as defined by independent claims 1, 5, 9 and 13 is not obvious. Since the remaining claims depend either directly, or indirectly, from these claims, it is submitted that the dependent claims are also not obvious for the same reasons.

In the Office Action, the Examiner stated that since the Applicant did not properly challenge the Examiner's taking of Official Notice of the use of fire-resistant sealant in duct joints, such is considered to be admitted prior art.

It is noted that the MPEP Section 2144.03 sets forth the procedures for relying on common knowledge or taking Official Notice. It finds not to be appropriate for the Examiner to take Official Notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. If Official Notice is taken of a fact, unsupported by documentary evidence, the technical line of reasoning underlying a decision to take such Notice must be clear and unmistakable. MPEP Section 2144.03(B). In conclusion, the MPEP states:

Furthermore, ...any facts so noticed should be of notorious character and serve only to "fill in the gaps" in an insubstantial manner which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon a rejection is based. (citations omitted) (emphasis added)

MPEP 2144.03(E).

Finally, the MPEP provides that "If the traverse was inadequate, the Examiner should include an explanation as to why it was inadequate." MPEP Section 2144.03 (C) (emphasis added).

It is respectfully submitted that in the present instance, none of the noted guidelines, appear to have been followed. In particular, the Examiner merely took Official Notice of the use of fire-resistant sealant in duct joints, without any evidence, reasoning, explanation, or basis, or even a statement that the facts relied upon are well-known or common knowledge.

Further, the fact relied upon by the Examiner does not serve only to "fill in the gaps" in an insubstantial manner. It has been used in a substantial manner to support a rejection under 35 USC §103(a). The relied upon use of fire-resistant sealant in duct joints is a specifically recited feature in the claims.

Even further, no explanation has been provided as to why the traverse was inadequate.

At least in view of the above, it is respectfully submitted that the Examiner's taking of Official Notice of the use of fire-resistant sealant in duct joints, is *de jure* improper *ab initio*, and should therefore be withdrawn. In the alternative, the Examiner is requested to provide documentary evidence with explanation and reasoning.

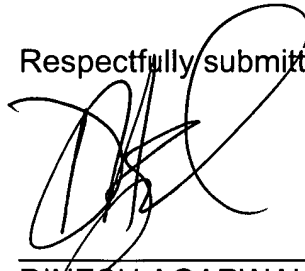
Appl No.: 10/705,967
Amdt. After Final Rejection dated August 23, 2006
Reply to Office Action of February 23, 2006

In view of the foregoing, favorable reconsideration and allowance of the subject application is respectfully requested.

It is believed that no additional fee is due for this submission. However, should that determination be incorrect, the Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment, to our Deposit Account No. 01-0433, and notify the undersigned in due course.

Should the Examiner have any questions or wish to discuss further this matter, please contact the undersigned at the telephone number provided below.

Respectfully submitted,



DINESH AGARWAL
Attorney for Applicant(s)
Reg. No. 31,809

Law Office - Dinesh Agarwal, P.C.
5350 Shawnee Road, Suite 330
Alexandria, Virginia 22312
Tel.: (703) 642-9400
Fax: (703) 642-9402

DA/va